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**HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5853 OF 2007.

Darshan s/o Anandrao Devkant. ..Petitioner.

Versus.

The State of Maharashtra & Others...Respondents.

Mr. P. K. Joshi and C. M. Lokesh for the petitioner.

Mr. R. S. Apte for the respondent -4.

Mr. A. H. Palekar A.G.P. for the State.

**CORAM: S. B. MHASE &
D.G.KARNIK, JJ.**

DATE: AUGUST 16, 2007.

P.C.

1. Heard Mr. P.K.Joshi learned counsel appearing on behalf of the petitioner. The Petitioner is a member of the Shree Sadguru Jungli Maharaj SahakariBank Ltd., Chinchwad - respondent no.3, which is a insured bank and the provisions of Section 110-A of the Maharashtra Co-operative Societies Act, 1960 (for short, "MCS Act") are applicable to the said Bank. The petitioner has a share worth Rs.252/- in the said Bank. However, the petitioner does not have any personal deposits with the respondent no.3 - Bank.

. The petitioner has challenged the order dated 10th July 2007 passed by the Commissioner for Co-operation and Registrar of Co-operative Societies

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Maharashtra State, Pune, thereby directing the amalgamation of the respondent no.3 Bank with respondent no.4 Bank. The learned counsel for the petitioner tried to persuade this Court that during the period of Administrator who was appointed in the year 2002 at the instance of the Reserve Bank of India, the condition of the Bank has improved, namely, the deposits have increased. However, the Board of Directors were removed at the directions of the Reserve Bank of India, since the Board of Directors have committed a fraud of approximately Rs.44 crores and there was an inspection report to that effect. Later on it has been noticed by the Reserve Bank of India that the Capital Adequacy Ratio has not been properly maintained by the respondent no.3 - Bank. The Reserve Bank of India desires that it should be 9%, as against that in respect of the respondent no.3 - Bank it has gone below "-5", and therefore the Reserve Bank of India has suggested and also approved the scheme that the respondent no.3 - bank should be amalgamated with other bank.

2. It is pertinent to note that the General Body of the respondent no.3 in its meeting dated 1st November 2006 has equally passed a Resolution for amalgamation of the respondent No.3- Bank with respondent no.4. Not only that the employees of the respondent no.3 Bank have also moved the Reserve Bank of India and the concerned Department for transfer to

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and/or amalgamation of the respondent no.3 - Bank with some other Bank. The learned counsel for the petitioner tried to submit that the Resolution for amalgamation passed by the General Body was moved at the eleventh hour and the said Resolution is not proper resolution. However, that dispute cannot be allowed to be raised before this Court in view of the facts that the said resolution was passed on 1st November 2006 and the remedy of Section 91 of under the MCS Act was available to the petitioner to challenge the said resolution by filing a Dispute. The petitioner for whatever the best reasons known to him has not followed that remedy.

3. Apart from that even before this Court the fact that the Capital Adequacy Ratio has not been maintained by the respondent No.3 - Bank, is not disputed. Therefore, under these circumstances in the interest of share holders, the respondent and Commissioner for Co-operation have thought it proper to amalgamate the respondent no.3 - Bank with the respondent No.4 Bank. Taking an overall view of the matter we find that the order has been properly passed. We find that the petitioner who has lost the battle in the general body meeting is trying to have a shadow fighting by filing this writ petition.

4. We would also like to make a reference to **Foss v/s. Harbottle (1843) 2 Hare 461** wherein it has

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been held that the minority shareholders has no right to challenge the majority decision.

5. We find no substance in the petition. We therefore reject the petition.

6. At this stage, learned counsel for the petitioner tried to submit that the impugned order be stayed for a period of three weeks so that the petitioner can follow another remedy available to him in law. In the interest of shareholders we are not in favour of the granting such relief. Therefore, request for stay is rejected.

(D.G.KARNIK, J.)

(S.B.MHASE, J.)